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LEGAL THEORY

1988-89

Professors Wayne Sumner and Ernest J. Weinrib

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LEGAL THEORY

Session

I.	Organization of the Course	
II.	The General Positions (no readings)	
III.	Two Examples	
	A. Causation in Tort Law	
	The Externalist Perspective:	
	Calabresi, Concerning Cause and the Law of Torts	1
IV.	A Supposed Middle Ground:	
	Coleman, Corrective Justice	21
	Coleman, The Structure of Torts	31
	The Internalist Perspective:	
	Weinrib, The Morality of Tort Law	56
	Weinrib, Causation and Wrongdoing	64
	B. Unconscionability in Contract Law	
V.	The Externalist Perspective:	
	Kronman, Distributive Justice and Contract	87
VI.	The Internalist Perspective:	
	Benson, Equality in Contract	
VII.	Theoretical Issues	
	A. The Structure of a Legal Theory	
	Internalism: Weinrib, Legal Formalism	

VIII.	Externalism: Sumner, The Moral Foundations of Rights, chapters 3, 5.1.	87
IX.	B. Justice	
	Kelsen, General Theory of Law and the State, Preface	138
	Kelsen, What is Justice?	141
	Weinrib, Aristotle's Forms of Justice	146
X.	C. The Normative Ground	
	Externalism: Sumner, Abortion and Moral Theory, ch. 5	156
	Sumner, The Moral Foundations of Rights, ch. 6	173
	Internalism: Weinrib, Law as a Kantian Idea of Reason	191
	An example: Necessity	
	Model Penal Code s. 3.02	210
	Kant, Metaphysical Elements of Justice	211
XII.	Discussion (no readings)	

Note: Students will be required to write

- (i) a weekly paper of no more than one page concerning the readings to be discussed at the following class. Students should react critically to the readings rather than summarize them. Feel free to essay criticisms, complain about obscurities, confess puzzlement, speculate about the line of reasoning or do anything that gives evidence of an active mind. Above all, **KEEP IT SHORT!**
- (ii) a paper of 20-30 pages dealing with some issue arising out of or related to the theme of this course.